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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Blake and Jenna Miller, individually and on
behalf of C.M., a minor child,

Plaintiffs,

v.

United States of America,

Defendant.

Case No. 2:19-cv-01293-APG-VCF

**STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF
FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2677**

It is hereby stipulated by and between the undersigned Plaintiffs (meaning any person,
other than the defendant, the parties' attorneys, the settlement broker, and the brokerage
company, signing this agreement waiving and releasing claims, whether or not a party to this

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1 civil action), and the Defendant, United States of America, including its agents, servants, and
2 employees (hereinafter “United States”), collectively, “the parties,” by and through their
3 respective attorneys, as follows:

4 1. The parties to this Stipulation for Compromise Settlement and Release
5 (hereinafter “Stipulation”) do hereby agree to settle and compromise each and every claim of any
6 kind, whether known or unknown, including claims for wrongful death, arising directly or
7 indirectly from the acts or omissions that gave rise to the above-captioned action under the terms
8 and conditions set forth in this Stipulation.
9

10 2. This Stipulation is not, is in no way intended to be, and should not be construed
11 as, an admission of liability or fault on the part of the United States, its agents, servants, or
12 employees, and it is specifically denied that they are liable to Plaintiffs. This settlement is
13 entered into by all parties for the purpose of compromising disputed claims under the Federal
14 Tort Claims Act and avoiding the expenses and risks of further litigation.
15

16 3. In consideration for the Plaintiffs’ agreement to accept the terms and conditions of
17 this settlement, the United States agrees to pay the cash sums set forth below in Paragraph 3.a.
18 and to purchase the annuity contract(s) described below in Paragraph 3.b.

19 a. Within five business days after counsel for the United States receives (1)
20 this Stipulation signed by all parties to said document; (2) the Social Security numbers or tax
21 identification numbers of Plaintiffs and Plaintiffs’ attorneys; (3) a copy of the birth certificate
22 and social security card (or alternative form of identification acceptable to the United States) of
23 Colton Miller; (4) Order(s) approving the settlement, and authorizing an individual or entity to
24 sign, on behalf of any minor or legally incapacitated adult; and (5) an authorization by the
25 Attorney General or his designee to conclude negotiations and to consummate the settlement,
26

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1 counsel for the United States will submit the following requests to the United States Treasury,
2 for the sum of Five Million Dollars (\$5,000,000.00) (hereinafter “Settlement Amount”) to be
3 paid as follows:

4 (1) An electronic funds transfer (“EFT”) in the amount of Two Million and
5 Five Hundred Thousand Dollars (\$2,500,000.00) (hereinafter “Upfront Cash”) made payable to
6 Whitehurst, Harkness, Brees, Cheng, Alsaffar, Higginbotham, and Jacob, PLLC’s IOLTA
7 account.
8

9 With respect to the payment of the Upfront Cash, Plaintiffs stipulate and agree that the
10 United States will not sign an annuity application form, a uniform qualified settlement form, or
11 any equivalent such forms, and that the United States will not pay the Upfront Cash into a
12 qualified settlement fund or an equivalent fund or account, settlement preservation trust, or
13 special or supplemental needs trust. Plaintiffs further stipulate and agree that the Plaintiffs, the
14 Plaintiffs’ attorneys, any Guardian Ad Litem, and the Plaintiffs’ representatives (including any
15 structured settlement annuity broker, regardless of whether said broker was retained by them or
16 by someone else, either before, during, or after the settlement) will not attempt to structure the
17 Upfront Cash in any way, form, or manner, including by placing any of the Upfront Cash into
18 any qualified settlement fund or its equivalent. However, nothing in this Paragraph 3.a.(1)
19 precludes Plaintiffs from purchasing non-qualified annuities after Plaintiffs have deposited the
20 Upfront Cash, but Plaintiffs agree not to represent to any person, entity, or agency that Plaintiffs
21 are purchasing qualified structured settlement annuities and Plaintiffs agree not attempt to
22 purchase such structured settlement annuities.
23
24

25 Plaintiffs’ attorney agrees to facilitate the disbursement of the Upfront Cash. Plaintiffs
26 stipulate and agree that the attorney shall escrow the aggregate face value of any and all currently

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1 known liens and currently known claims for payment or reimbursement, including any such liens
2 or claims by Medicaid or Medicare, arising out of the subject matter that gave rise to the above-
3 referenced civil action, whether disputed as legally valid or not, and shall not distribute to
4 Plaintiffs any portion of the escrowed amount unless and until said liens and claims have been
5 paid or resolved.

6 (2) For the purchase of the annuity contract described below in Paragraph
7 3.b., an electronic funds transfer (EFT) in the amount of Two Million and Five Hundred
8 Thousand Dollars (\$2,500,000.00) (hereinafter "Annuity Premium Amount") to Brant Hickey &
9 Associates.

11 (3) The parties agree that any attorneys' fees owed by Plaintiffs relating to this
12 Federal Tort Claims Act matter shall not exceed twenty-five percent (25%) of the Settlement
13 Amount. 28 U.S.C. § 2678. The parties further agree that any such attorneys' fees, along with
14 Plaintiffs' costs and expenses incurred in bringing the above-referenced action, and their costs,
15 expenses, and fees (including all fees if any legal Guardian Ad Litem) associated with obtaining
16 court approval of this settlement on behalf of any minor, incompetent adult, or estate required to
17 sign this Stipulation, shall be paid out of the Upfront Cash paid pursuant to paragraph 3.a.(1)
18 above, and not in addition thereto. The parties agree that any fees, including fees of any legal
19 Guardian Ad Litem, incurred in providing legal services in this matter and in any court
20 proceedings reviewing the settlement for approval purposes shall be considered attorneys' fees
21 and not costs, and shall be subject to the provisions of 28 U.S.C. § 2678.

24 b. Based on the following terms and conditions, the United States will
25 purchase the following annuity contract(s):

26 (1) The United States will purchase annuity contract, from an annuity

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1 company rated at least A by A.M. Best rating service, to pay to C.M., or to an account in the
2 name of, or for the benefit of, C.M., the sum of \$5,358.36 per month, beginning one month from
3 date of purchase and continuing for the life of C.M. and the installment refund period ("Period
4 Certain"), increasing at 1.50% compounded annually after the first year of payments. In the event
5 the cost of the annuity contract has either increased or decreased by the date of purchase, the
6 annuity payments described above shall be adjusted upward or downward to ensure that the total
7 cost of the annuity contract is equal to the Annuity Premium Amount and not more or less than
8 that amount. The monthly annuity payments are based upon the date of birth for C.M. of
9 September 7, 2015, that was provided by Plaintiffs. If the date of birth is otherwise, the annuity
10 payments described above will be adjusted accordingly. In the event of the death of C.M. during
11 the Period Certain, the remaining payments shall be payable to the United States Treasury Re
12 C.M. and mailed to the following address: Director, Torts Branch (FTCA Litigation Section),
13 Civil Division, United States Department of Justice, P.O. Box 888, Benjamin Franklin Station,
14 Washington, D.C. 20044, or, upon written notice, and subsequent change of address.
15
16

17 (2) The annuity contract(s) being purchased pursuant to this Paragraph
18 3.b. will be owned solely and exclusively by the United States and will be purchased through
19 Brant Hickey & Associates as specified above in Paragraph 3.a. The parties stipulate and agree
20 that the United States' only obligation with respect to any annuity contract purchased pursuant to
21 this Stipulation, and any annuity payments therefrom, is to purchase said contract, and they
22 further agree that the United States does not guarantee or insure any of the annuity payments.
23 The parties further stipulate and agree that the United States is released from any and all
24 obligations with respect to an annuity contract and annuity payments upon the purchase of said
25

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1 contract.

2 (3) The parties stipulate and agree that any annuity company that
3 issues an annuity contract shall, at all times, have the sole obligation for making all annuity
4 payments. The obligation of an annuity company to make each annuity payment shall be
5 discharged upon the mailing of a valid check in the amount of such payment to the address
6 designated by the party to whom the payment is required to be made under this Stipulation.
7 Payments lost or delayed through no fault of the annuity company shall be promptly replaced by
8 the annuity company, but the annuity company is not liable for interest during the interim.
9

10 (4) The parties stipulate and agree that the annuity payments cannot be
11 assigned, accelerated, deferred, increased, or decreased by the parties and that no part of any
12 annuity payments called for herein, nor any assets of the United States or the annuity company,
13 are subject to execution or any legal process for any obligation in any manner. Plaintiffs and
14 Plaintiffs' guardians, guardian ad litem (if any), heirs, executors, administrators, and assigns do
15 hereby agree that they have no power or right to sell, assign, mortgage, encumber, or anticipate
16 said annuity payments, or any part thereof, by assignment or otherwise, and that any attempt to
17 sell, assign, mortgage, encumber, or anticipate said annuity payments, or any part thereof, by
18 assignment or otherwise, shall constitute a breach of contract.
19

20 (5) Plaintiffs and Plaintiffs' guardians, guardian ad litem (if any),
21 heirs, executors, administrators, and assigns do hereby agree to maintain with the annuity
22 company and the United States a current mailing address for C.M. and to notify the annuity
23 company and the United States of the death of Colton Miller within ten (10) days of death.
24 Plaintiffs and Plaintiffs' guardians, guardian ad litem (if any), heirs, executors, administrators,
25 and assigns do hereby further agree to provide to the annuity company and the
26

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1 United States a certified death certificate within sixty (60) days of the death of C.M..

2 (6) Plaintiffs and Plaintiffs' guardians, guardian ad litem (if any),
3 heirs, executors, administrators, and assigns do hereby agree to provide to the annuity company
4 and the United States proof of status as to life, death, legal capacity, and legal authority in the
5 form and at the frequency determined by the annuity company, the United States, or both.
6 Plaintiffs and Plaintiffs' guardians, guardian ad litem (if any), heirs, executors, administrators,
7 and assigns do hereby agree the annuity company may delay or otherwise withhold any payment,
8 without interest, until the annuity company has received such proof or proofs of status. With
9 respect to proof of status of life, Plaintiffs and Plaintiffs' guardians, guardian ad litem (if any),
10 heirs, executors, administrators, and assigns do hereby agree to provide such proof annually on
11 or before the anniversary of the date the annuity contract is issued by the annuity company
12 ("Anniversary Date"), or at any other time upon request of the annuity company, the United
13 States, or both. In the event the annual proof of living status is not provided to the annuity
14 company and the United States within sixty (60) days of the Anniversary Date or within sixty
15 (60) days of the date of any request by the annuity company or the United States, Plaintiffs and
16 Plaintiffs' guardians, guardian ad litem (if any), heirs, executors, administrators, and assigns do
17 hereby agree that the annuity company(ies) may cease making payments until such time as proof
18 of living status is provided.

21 (7) Plaintiffs and Plaintiffs' guardians, guardian ad litem (if any),
22 heirs, executors, administrators, and assigns do hereby agree that the annuity company(ies)
23 has/have the right to recoup erroneously paid annuity payments.

25 4. Plaintiffs and Plaintiffs' guardians, guardian ad litem (if any), heirs, executors,
26 administrators, and assigns hereby accept the terms and conditions of this Stipulation, including

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1 the sums set forth above in Paragraph 3.a and the purchase of the annuity contract set forth above
2 in Paragraph 3.b, in full settlement, satisfaction, and release of any and all claims, demands,
3 rights, and causes of action of any kind, whether known or unknown, including any future claims
4 for survival or wrongful death, and any claims for fees, interest, costs, and expenses, arising
5 from, and by reason of, any and all known and unknown, foreseen and unforeseen, bodily and
6 personal injuries, including the death of C.M., or damage to property, and the consequences
7 thereof, which Plaintiffs or their heirs, executors, administrators, or assigns may have or
8 hereafter acquire against the United States on account of the subject matter of that gave rise to
9 the above-captioned action.
10

11 Plaintiffs, on behalf of themselves, their respective heirs, executors, administrators,
12 assigns, predecessors and successors in interest, do hereby, for good and valuable consideration,
13 the receipt of which is hereby acknowledged, release and forever discharge the United States,
14 and its respective officials, agencies, representatives, officers, employees, agents, assigns and
15 attorneys, from any and all claims, demands, rights, causes of actions, liens, and all other
16 liabilities whatsoever, whether known or unknown, suspected or unsuspected, that Plaintiffs have
17 had, now have or hereafter may have with respect to the same subject matter that gave rise to the
18 above-captioned action, as well as claims relating to or arising out of the subject matter that gave
19 rise to the above-captioned action that could have been but were not alleged in this action.
20

21 Plaintiffs and Plaintiffs' guardians, heirs, executors, administrators, and assigns further
22 agree to reimburse, indemnify, and hold harmless the United States from and against any and all
23 claims, causes of action, liens, rights, or subrogated or contribution interests (whether such
24 claims, causes of action, liens, rights, subrogated interests, or contribution interests sound in tort,
25 contract, or statute) incident to, or resulting or arising from, the acts or omissions that gave rise
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1 to the above-captioned action, including claims or causes of action for wrongful death.

2 The Plaintiffs and Plaintiff's guardians, heirs, executors, administrators, and assigns
3 further stipulate and agree that they are legally responsible for any and all past, present, and
4 future liens and past, present, and future claims for payment or reimbursement, including any
5 past, present, and future liens or claims for payment or reimbursement by any individual or
6 entity, including an insurance company, Medicaid (including the State of Nevada), and
7 Medicare, arising from the injuries that are the subject matter of this action. Plaintiffs stipulate
8 and agree that they will satisfy or resolve any and all such past, present, and future liens or
9 claims for payment or reimbursement asserted by any such individual or entity. Plaintiffs agree
10 that, no later than thirty (30) days from the date any past, present, or future lien or claim for
11 payment or reimbursement is paid or resolved by Plaintiffs, they will provide to the United States
12 evidence that said lien or claim has been satisfied or resolved and that said lienholder has waived
13 and released such lien or claim. The evidence required by the terms of this Paragraph may be
14 satisfied by a letter from Plaintiffs' attorney representing to counsel for the United States that
15 such lien or claim has been satisfied or resolved and that the lienholder has waived and released
16 such lien and claim.

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19 5. This compromise settlement is specifically subject to each of the following
20 conditions:

21 a. The Attorney General or the Attorney General's designee must approve
22 the terms and conditions of the settlement and authorize the attorney representing the United
23 States to consummate a settlement for the amount and upon the terms and conditions agreed
24 upon by the parties, as set forth in this Stipulation.

25 b. The parties must agree in writing to the terms, conditions, and

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requirements of this Stipulation. The parties stipulate and agree that the Stipulation and the compromise settlement are null and void in the event the parties cannot agree on the terms, conditions, and requirements of this Stipulation. The terms, conditions, and requirements of this Stipulation are not severable and the failure to agree, fulfill, or comply with any term, condition, or requirement renders the entire Stipulation and the compromise settlement null and void. The parties must agree to the terms, conditions, and requirements of this Stipulation before the United States Attorney's Office will seek settlement authority from the Attorney General or the Attorney General's designee.

c. C.M. must be alive at the time the annuity contract described in Paragraph 3.b. is purchased. In the event of the death of C.M. prior to the annuity contract purchase, the entire Stipulation and compromise settlement are null and void.

d. Plaintiffs must obtain, at their expense, approval of the settlement by a court of competent jurisdiction on behalf of C.M.. The terms of any court Order, a draft of which shall be provided by the United States, are a condition of this settlement. Plaintiffs agree to obtain such approval(s) in a timely manner: time being of the essence. Plaintiffs further agree that the United States may void this settlement at its option in the event any such approval is not obtained in a timely manner. In the event Plaintiffs fail to obtain such court approvals), the entire Stipulation and the compromise settlement are null and void. Plaintiffs must obtain such court Order before the United States Attorney's Office will seek settlement authority from the Attorney General or the Attorney General's designee.

e. Plaintiffs must provide the United States with a complete set of the **extant** medical records of C.M. for the 36-month period prior to the date Plaintiffs sign this Stipulation. Plaintiffs must provide all such extant medical records for said 36-month period

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1 before the United States Attorney's Office will seek settlement authority from the Attorney
2 General or the Attorney General's designee. In the event said records and reports reveal that
3 C.M., had or has any such potentially life-threatening or life-shortening diseases or illnesses not
4 caused by the medical care at issue in this action, the United States reserves the right to elect not
5 to consummate the settlement and upon such election by the United States the entire settlement
6 is null and void.

7 f. Plaintiffs must obtain a release and waiver of any claim or cause of action
8 (whether sounding in tort, contract, statute, or otherwise) that any alleged tortfeasor, if any, has
9 or may have in the future against the United States arising out of the subject matter of the above-
10 captioned action. This condition is for the benefit of the United States exclusively. The United
11 States will provide the form of Release and Waiver, or any changes to the form required by the
12 United States, to be used by Plaintiffs in obtaining a Release and Waiver from any alleged
13 tortfeasor. Before the United States Attorney's Office will seek settlement authority from the
14 Attorney General or the Attorney General's designee, Plaintiffs must provide the United States
15 with either (i) all such releases and waivers required by this Paragraph 5.f., or (ii) a written
16 representation by Plaintiffs' attorney stating that, after a diligent search of counsel's law firms'
17 records and files, including expert and consultant reports, and of Plaintiffs' records and files,
18 Plaintiffs and their attorney are unaware of any such potential tortfeasor.

19 g. Plaintiffs must file for an Order from the United States District Court for
20 the Nevada an Order dismissing this action in its entirety with prejudice, with each side bearing
21 its own costs, expenses, and fees, and with the District Court not retaining jurisdiction over the
22 above-captioned action, this settlement, or the United States within five business days of the
23 issuance of the electronic funds transfers described in paragraph 3.a..

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1 6. The parties agree that this Stipulation, including all the terms and conditions of
2 this compromise settlement and any additional agreements relating thereto, may be made public
3 in their entirety, and Plaintiffs expressly consent to such release and disclosure pursuant to 5
4 U.S.C. § 552a(b).

5 7. Plaintiffs shall be solely responsible for full compliance with all applicable
6 Federal, state, and local tax requirements. Plaintiffs execute this Stipulation without reliance
7 upon any representation by the United States as to tax consequences, and Plaintiffs agree that
8 they are responsible for the payment of all taxes that may be associated with this settlement.
9 Further, nothing in this Stipulation waives or modifies Federal, state, or local laws pertaining to
10 taxes, offsets, levies, and liens that may apply to this Stipulation or the Settlement Amount
11 proceeds. Plaintiffs execute this Stipulation without reliance on any representation by the United
12 States as to the application of any such law. Plaintiffs, on behalf of themselves and their
13 guardians, heirs, executors, administrators, assigns, subrogees, predecessors in interest, and
14 successors in interest, understand and agree that this transaction may be reported to the Internal
15 Revenue Service and other government agencies in the ordinary course of the business of the
16 United States and may be subject to offset pursuant to the Treasury Offset Program.

17 8. Plaintiffs represent that they have read, reviewed and understand this Stipulation,
18 and that they are fully authorized to enter into the terms and conditions of this agreement and
19 that they agree to be bound thereby. Plaintiffs further acknowledge that they enter into this
20 Stipulation freely and voluntarily. Plaintiffs further acknowledge that they have had sufficient
21 opportunity to discuss this Stipulation with their attorney, who has explained the documents to
22 Plaintiffs and that Plaintiffs understand all of the terms and conditions of this Stipulation.

23 9. It is contemplated that this Stipulation may be executed in several counterparts,
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1 with a separate signature page for each party. All such counterparts and signature pages,
2 together, shall be deemed to be one document.

3 WHEREAS, the parties accept the terms of this Stipulation for Compromise Settlement
4 and Release as of the dates written below:

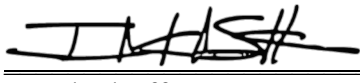
5 Executed this ____ day of _____ 2021.

6 UNITED STATES OF AMERICA

7 By: _____
8 Brianna Smith
9 Assistant United States Attorney
10 Attorney for Defendant
United States of America

1 Executed this _____ day of December, 2021.

2 ATTORNEYS FOR PLAINTIFFS
3 Whitehurst, Harkness, Brees, Cheng, Alsaffar,
4 Higginbotham, and Jacob, PLLC

5 By: 
6 Jamal Alsaffar
7 Tom Jacob
8 Attorneys for Plaintiffs
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1 Executed this 9th day of December 2021.

2 F
3 MILLER, A MINOR

4 By:

Jenna C Miller
5 Jenna Miller, mother and legal guardian
6 on behalf of minor child C a Miller

7 PLAINTIFF
8 JENNA MILLER

9 By:

Jenna C Miller
10 Jenna Miller, individually

11 PLAINTIFF
12 BLAKE MILLER

13 By:

Blake Miller
14 Blake Miller, individually

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Executed this 22 day of December, 2021.

STRUCTURED SETTLEMENT BROKERAGE COMPANY
BRANT HICKEY & ASSOCIATES (HEREINAFTER "COMPANY")

I, the undersigned, am duly authorized to sign this Stipulation on behalf of the Company and have furnished written proof thereof to the United States. I also declare under penalty of perjury that the Company and its employees, agents, and structured settlement annuity brokers are covered by an Errors and Omission insurance policy and a fidelity bond or equivalent insurance coverage, and have furnished to the United States a certificate or proof of insurance for such policies. By signing this Stipulation, I agree that the Company will accept the Annuity Premium Amount. I further agree that, within five business days of receipt of the Annuity Premium Amount, the Company will (1) disburse the Annuity Premium Amount to an annuity company, rated at least A by A.M. Best rating service, for the purchase the annuity contract(s) described above in Paragraph 3.b of this Stipulation, and (2) provide to the parties' written proof that the Annuity Premium Amount has been accepted by said annuity company.

I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746.

By:


Dave Hickey, CPEU, CEO & Managing Partner
On behalf of the Company

1 Executed this 22 day of December, 2021.

2 STRUCTURED SETTLEMENT ANNUITY BROKER
3 DAVE HICKEY (HEREINAFTER "BROKER")

4 I, the undersigned Broker, declare that I currently meet the minimum qualifications set
5 forth in 28 CFR § 50.24 to provide structured settlement annuity brokerage services to the United
6 States and that I am currently covered by an Errors and Omissions insurance policy and a fidelity
7 bond or equivalent insurance coverage, and have furnished to the United States a certificate or
8 proof of insurance for such policies. By signing this Stipulation, I agree that the application for
9 any annuity contract and the annuity contract issued by the annuity company will comply with
10 the terms and conditions of Paragraph 3.b of this Stipulation.

11 I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746.

12 
13 _____
14 Dave Hickey

15 Structured Settlement Annuity Broker
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